IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.195 OF 2007

Suresh Sitaram Keer & Anr. .. Petitioners.

Versus

M/s.Empire Builders & Developers & Ors. .. Respondents.

Mr.Anil Menon with Mr.V.P.Amin i/b. B.Amin & Co. for petitioner.

Mr.G.S.Bhat for respondent Nos.1 to 5.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th AUGUST, 2007.

P.C.:

1. After the order passed on 27th July, 2007, recording the statements of Mr.Bhat, appearing for respondent Nos.1 to 5, an additional affidavit has been filed, copy of which has been handed over to the petitioners' Advocate. That affidavit is affirmed by respondent No.2.

2. In paragraphs 2 and 3 of the affidavit, the respondent No.2 states thus :-

"2. I say that the South West wing of the said building, is hollow from first floor to 7th floor i.e. stilt on the ground floor and the flat on 8th floor is constructed. I say that by mistake I have stated that the same is hollow from second floor to 7th floor, where we can construct six flats. I unconditionally apologise for the mistake occurred in the reply and instructions given to our Advocate.

3. I say that the Municipal Corporation of Greater Mumbai has sanctioned the plan for 5 flats from 3rd floor to 7th floor. I say that the Commencement Certificate in respect of these 5 flats was deferred in the respect of these flats. I say that our architect has now submitted the application for Commencement Certificate in respect of the said five flats."

3. Mr.Bhat, after taking instructions from the respondent No.2, who is present in Court confirms the above statements and states that, inadvertently and by mistake, it was stated on 27th July, 2007 that 6 flats would be available between floor Nos.2 to 8.

4. Now, the revised figure is 5 flats. He further states that out of these 5 flats, 3 flats are to be handed over to the Mumbai Municipal Corporation for accommodating three project affected persons. He has enlisted the names of these persons in paragraph 5 of this affidavit. Mr.Bhat states that the flats, which are earmarked for these project affected persons are flat Nos.301, 401 and 501. Flat No.301 is admeasuring 390 sq.ft., whereas flat Nos.401 and 501 each admeasure 430 sq.ft. They have been offered to the project affected persons despite requirement in law being that the area offered to such persons should be 225 sq.ft. The additional area is offered because it is not possible to utilize the same otherwise.

5. However, Mr.Bhat states that, two flats on the 6th and 7th floor are for the purposes of the computation of benefits of FSI, in favour of the petitioners and respondents, in terms of the said Agreement. He further states that, two flats on 6th and 7th floor, admeasure 430 sq.ft. each approximately and even these flats upon construction and completion would be kept vacant and not disposed of, alienated, encumbered or parted with in any manner.

6. The project affected persons have already been offered the flats inasmuch as the Agreements have been entered into with them and registered in accordance with law. He states that the moment, the flats are ready for occupation by these project affected persons, they would be offered to them and none else. He states that, copies of the letters/documents handing over and confirming the possession of these flats would be handed over to the petitioners' Advocate within a period of one week from the date of their execution.

7. Accordingly, the arbitration petition stands disposed of by making following interim measures, which are without prejudice to the rights and contentions of both sides :-

a) The developer shall not in any manner, alienate, encumber, transfer or part with three shops, seven flats, terrace area and common areas and seven car parking spaces. Mr.Bhat states that this is the entitlement of the petitioners and respondent No.6. Each of these shops and flats, after being ready for occupation, would be kept vacant and not handed over in the manner more

particularly set out above till the decision by the arbitral tribunal, inasmuch as they will not be sold and/or transferred in the name of third party.

b) Similarly, two flats on the 6th and 7th floor, which have been referred to in the foregoing paragraphs would also not be alienated, encumbered, transferred or their possession parted with in any manner till the conclusion of the arbitral proceedings.

8. Mr.Menon and Mr.Bhat both state that at this stage, this protects the rights of the petitioners as well as respondent No.6 sufficiently. This order is passed without prejudice to the rights and contentions of both sides. Additionally, liberty is reserved to the parties to apply for modification and or variation of this order. Equally, petitioners would be at liberty to apply for further interim measures as and when necessary.

9. Mr.Bhat states that in terms of the Agreement between the owners and the developers, four covered parking spaces are to be made available and three uncovered, making a total of seven parking spaces for the

owners. In addition, seven parking spaces are available for the other flats. He states that occupation certificate is yet to be granted. Mr.Bhat states that details of the car parking spaces available for occupation by other purchasers / project affected persons would be provided to the petitioners' Advocate within a period of 10 days from the date of occupation certificate being granted and in that event, liberty is reserved to the petitioners to apply for interim measures even in terms of parking spaces.

10. Mr.Bhat, after taking instructions from the respondent No.3 states that 3 flats would be handed over to the project affected persons themselves and as of today, there is no authorization in favour of the developers enabling them to dispose of these flats in open market.

11. By consent of both sides, Mr.Justice S.C.Pratap (Retd. Chief Justice of Andhra Pradesh High Court) is appointed as the Sole Arbitrator and parties state that they would co-operate in expeditious disposal of the reference by the Sole Arbitrator.

(S.C.Dharmadhikari, J.)